REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

PUBLISHED BY AUTHORITY

No. 210] NEW DELHI, MONDAY, OCTOBER 13, 1958/ASVINA 21, 1880

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th October 1958

S.O. 2136.—In pursuance of the provisions of sub-rule (3) of rule 140 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 and in continuation of its notification No. 82/451/57, dated the 24th October, 1957, published in the Gazette of India, Extraordinary, Part II, Section 3, dated the 28th October, 1957, the Election Commission hereby publishes the order of the High Court of Judicature at Allahabad, passed on the 19th August, 1958, on the writ petition No. 1044 of 1958, filed by Haji Abdul Wahid, son of Hafiz Abdul Ghani, resident of Mohalla Khairabad, District Sultanpur, Uttar Pradesh, against the order dated the 26th September, 1957 of the Election Tribunal, Allahabad in the Election Petition No. 451 of 1957.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL SIDE—ORIGINAL JURISDICTION

Dated Allahabad the 19th day of August 1958

PRESENT

The Hon'ble V. Bhargava—*Judge* & The Hon'ble J. N. Takru—*Judge*.

Civil Misc. Writ No. 1044 of 1958.

Order on the petition of Haji Abdul Wahid—*Petitioner*.

In Re.—Haji Abdul Wahid son of Hafiz Abdul Ghani resident of Mohalla Khairabad District Sultanpur—*Petitioner*.

Versus

1. Dr. Balkrishna Vishwanath Keskar, Minister for Information and Broadcasting, Government of India, New Delhi.

2. Mr. K. K. Banerjee, Election Tribunal, (Single Member), Allahabad.

3. Shri Vidhyadhar Bajpai son of Shri Chandra Dutt Bajpai, resident of Mohalla Khairabad district Sultanpur—*Opposite parties*.

BY THE COURT

Counsel for applicant—Sri Iqbal Ahmad.

Counsel for Opp. Parties—Sri G. S. Pathak.

Delivered by Hon. V. Bhargava, J.

Haji Abdul Wahid has filed this petition under Article 226 of the Constitution for the issue of a writ of *certiorari* to quash a decision of the Election Tribunal, Allahabad, dated

the 25th of September, 1957, by which the Tribunal dismissed under section 90(3) of the Representation of the People Act an election petition which had been presented by the present petitioner challenging the election of opposite party No 1, Dr Balkrishna Vishwanath Keskar to the House of the People from the Musafirkhana Constituency No 358 The ground on which the Tribunal dismissed the election petition under section 90(3) of the Representation of the People Act, was that the Government Treasury receipt attached to the election petition by the petitioner, when he presented the election petition to the Election Commission, did not show that the sum of Rs 1000 deposited as security had been deposited in favour of the Secretary, Election Commission The Tribunal held that the provisions of section 117 of the Representation of the People Act were mandatory and, since the receipt did not have inscribed on it the words in favour of the Secretary, Election Commission' there was non compliance with the provisions of section 117 of the People Act It is this decision that has been challenged by this writ petition

"What is of the essence of the provision continued in section 117 of that the petitioner been decided by this Court in Bhuvanesh Bhushan Sharma *Vs* Election Tribunal, Farrukhabad and another (1958 A L J R 113) It was held in that case, that if the head of account prescribed by the Central Government for the deposit of security for costs of an election petition was correctly shown in a Government Treasury receipt it necessarily followed that the deposit was in favour of the Secretary, Election Commission, and consequently the entry of the head of account was sufficient to show that the deposit was in favour of the Secretary, Election Commission Subsequent to that decision by this Court there has also been a decision by the Supreme Court in Kamaraja Nadar *Vs* Kunju Thevar and others (1958 Supreme Court Journal 680) where the Supreme Court held as follows —

> "What is of the essence of the provision contained in section 117 of that the petitioner should furnish security for the cost of the petition, and should enclose along with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India is at the disposal of the Election Commission to be utilised by it in the manner authorised by law and is under its control and payable on a proper application being made in that behalf to the Election Commission or to any person duly authorised by it to receive the same, be he the Secretary to the Election Commission or any one else
>
> If, therefore it can be shown by evidence led before the Election Tribunal that the Government Treasury receipt or the Chalan which was obtained by the petitioner and enclosed by him along with his petition presented to the Election Commission was such that the Election Commission could on a necessary application in that behalf be in a position to realise the said sum of rupees one thousand for payment of the costs to the successful party it would be sufficient compliance with the requirements of section 117 No such literal compliance with the terms of section 117 is at all necessary as is contended for on behalf of the appellant before us"

Prima facie, these two decisions would show that the order of the Election Tribunal dismissing the election petition in the present case was incorrect because the correct head of account was entered in the Government Treasury receipt which was attached to the election petition Mr Pathak, learned counsel for opposite party No 1 Dr Balkrishna Viswanath Keskar, has, however urged that the decision of this court in Bhuvanesh Bhushan Sharma's case should not be applied to this case because the decision in that case proceeded on the basis of an examination of certain treasury rules and government orders and further on the evidence of a Deputy Accountant General who was examined in this Court during the hearing of that case whereas no such evidence is before this Court or was adduced before the Election Tribunal in the present case In advancing this argument, learned counsel relied on the view of the Supreme Court in the case of K Kamaraja Nadar cited above where the Supreme Court gave the decision that it could be shown by evidence led before the Election Tribunal that the Government Treasury receipt or the *chalan* was such that the Election Commission could, on a necessary application made in that behalf, be in a position to realise a sum of Rs 1000 for payment of the costs to the successful party The Supreme Court having recognised that evidence could be led Mr. Pathak has contended that, in the present case also, it was necessary that the petitioner should have led evidence in order to establish the fact that the money deposited by him was at the disposal of the Election Commission to be utilised by it in the manner authorised by law His further contention is that the treasury rules government orders and the evidence of the Deputy Accountant General, which were taken into account by this Court when deciding the case of Bhuvanesh Bhushan Sharma, are pieces of evidence which cannot be read in the present case by this court and could not have been taken into account by the Election Tribunal, and, if those pieces of evidence are excluded from consideration, the decision of that case that the entry of the head of account was by itself sufficient to show that the deposit was in favour of the Secretary, Election Commission cannot be arrived at in this case He has thus tried to distinguish the present case from that case and we have, therefore, to consider whether, in the present case, the Election

Tribunal had before it any material or that it was bound to take into account any material and, if so, whether that material was sufficient to arrive at the same decision which was arrived at in the case of Bhuvanesh Bhushan Sharma

There can, of course be no doubt that, so far as the evidence of the Deputy Accountant General in the case of Bhuvanesh Bhushan Sharma was concerned, that evidence was confined to that particular case only and any evidence given by him in that case before this Court cannot be taken into account when deciding the present writ petition, nor could it possibly have been taken in account by the Election Tribunal when dealing with the election petition of the present petitioner. It has, however, to be kept in view that the decision of this Court in Bhuvanesh Bhushan Sharma's case did not turn on the evidence of the Deputy Accountant General. The Judgment of that case itself makes it clear that the actual decision about the effect of the entry of the correct head of account in the receipt was based on the Central Government Treasury Rules and the relevant Government orders which were notified for the information of the public. The Deputy Accountant General was examined mainly for the purpose of discovering whether there were any other rules and orders which had not come to the notice of the Court and for the additional purpose of interpreting one of the rules in which the word 'refund' had been used. The Court was inclined to interpret that word 'refund' in a certain manner and the Deputy Accountant General was questioned to make it sure that that interpretation was correct and was the interpretation which formed the basis of the actual procedure in the treasuries. Consequently, even if the evidence of the Deputy Accountant General had been entirely ignored, the decision of the Court would have been the same in Bhuvanesh Bhushan Sharma's case as the one which has given after taking some assistance from the evidence of the Deputy Accountant General. The result is that, in the present case, if the evidence of the Deputy Accountant General which was confined to the case of Bhuvanesh Bhushan Sharma alone, is not taken into account but the rest of the material is taken into account, we would still arrive at the same decision.

Mr. Pathak has, however, further contended that even the treasury rules and the government orders govering the deposits in connection with these elections were not tendered as evidence before the Election Tribunal and should not be taken into account by us when deciding the present writ petition. This argument has not appeared to us. Section 117 of the Representation of the People Act lays down that the deposit is to be made in a Government Treasury and the Government Treasury receipt issued in pursuance of that deposit is to accompany the election petition when it is presented to the Election Commission. This section, therefore, recognises that there are government treasuries which issue receipts after accepting deposits. In order to properly apply that section it is essential that the rules which govern such deposits in the treasuries, must be taken into account. The question whether those rules are statutory rules or merely departmental rules governing the procedure of the treasuries does not seem to be material. Once the Legislature required the filing of a Government Treasury receipt after making a deposit in a government treasury, the Election Commission and the Election Tribunal, which had to consider whether the receipt was or was not a proper receipt, could only do so after looking at the rules governing the procedure in those treasuries. In fact, even for the purpose of deciding whether a receipt attached to an election petition is a Government Treasury receipt, reference to the rules governing the treasuries will certainly be necessary. It appears to us, therefore, that from the very nature of the provisions contained in section 117 of the Representation of the People Act an inference arises that the rules governing the treasuries have to be looked into by the authorities who have to decide the validity of the deposit.

Apart from this, there is the fact that at least the rules which govern the treasuries, have the force of a statute. It appears from the Government of India publication entitled 'Compilation of the Treasury Rules, Volume I' that the rules contained therein were framed by the Governor General in exercise of the power conferred on him by sub-section (1) of section 151 of the Government of India Act, 1935, which runs as follows:—

> "151(1)—Rules may be made by the Governor General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Federation or of the Province and the rules so made may prescribe, or authorise some person to prescribe the procedure to be followed in respect of the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid."

The preface to the Government of India publication entitled 'Compilation of the Treasuries Rules, Volume I' mentions the fact that these treasury rules were framed by the Governor-General in exercise of that power. There is a further mention that certain executive instructions relating to resource, currency, coinage and allied subjects which do not fall strictly

within the scope of sub-section (1) of section 151 of the Government of India Act, 1935, were also included in the Volume but they were contained in Part XIV of that volume. In the present case, the provisions contained in Part XIV of that volume are not required to be referred to and, consequently, we need not consider how far those provisions have the force of a statute. There is a further mention in the preface that details of departmental instructions on matters of minor importance or on subjects special or peculiar to the department concerned have been left to be prescribed by the departmental regulations and that formal authorisation to prescribe procedure in these matters, or to make exceptions to general rules in specified cases have been provided, where necessary, by means of rules included in the Treasury Rules. It is to be noticed that in sub-section (1) of section 151 of the Government of India Act, 1935, it was specifically laid down that the rules made by the Governor General could prescribe, or authorise some person to prescribe, the procedure to be followed in respect of the payment of moneys into the account of the revenues of the federation, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid. The Government of India Act, 1935, thus specifically empowered the Governor-General either to himself issue instructions on such matters or to authorise some other person to do so. Clearly, it was under this power conferred on the Governor-General by the Government of India Act, 1935, that certain treasury rules were made giving formal authorisation to prescribe procedures on the matters mentioned in the preface, or to make exceptions to general rules in specified cases, where necessary. The result is that even departmental instructions on matters of minor importance or on subjects special or peculiar to the department concerned have the force of a statute, having been issued by a person duly authorised by the Governor-General in exercise of his powers to grant that authorisation under sub-section (1) of section 151 of the Government of India Act, 1935. All the treasury rules contained in Volume I of the compilation of the Treasury Rules, except those in part XIV of that volume, are thus statutory rules and courts and tribunals, when deciding cases, have to refer to them in exactly the same manner as they are required to refer to laws properly promulgated. In fact, these rules stand on the same footing as any properly published law which has come into force. In these circumstances, it was the duty of the Tribunal to look into at these rules not only on the ground that the provisions of section 117 of the Representation of the People Act indicate that it would be necessary to do so but also on the ground that these rules have the force of a statute and any ignorance of these rules by the Tribunal would be a manifest error apparent on the face of the record. It is true that it cannot be held in the present case that the Election Tribunal, in dismissing the election petition on the ground of non-compliance with the provisions of section 117 of the Representation of the People Act, committed any error of jurisdiction. Interference by this Court in its writ jurisdiction is sought on the ground that the Tribunal committed a manifest error apparent on the face of the record. The Supreme Court, in T. C. Basappa *vs.* T. Nagappa and another (1955 Supreme Court Reports, 250) and Hari Vishnu Kamath *vs.* Syed Ahmad Ishaque and others (1955 Supreme Court Reports 1104) laid down the principle applicable when a court is requested to issue a writ of certiorari on the ground of an error in the decision or determination itself. The Supreme Court held:—

> "An error in the decision or determination itself may also be amendable to a writ of *'certitori'* but it must be a *manifest error apparent on the face of the proceedings e.g.*, when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision."

In the present case, not only is the principle laid down by the Supreme Court applicable but this case appears to us to be fully covered by the example given by the Supreme Court. The Supreme court held that where a decision is based on clear ignorance or disregard of the provisions of law, it would be a manifest error apparent on the face of the record and the decision would be amendable to a writ of *certiorari*. In the present case, the contention of Mr. Pathak that the treasury rules were not examined by the Election Tribunal would mean that the Tribunal gave its decision on clear ignorance of those rules which had the force of law. The example envisages two types of cases: One set of cases would be those where there is disregard of the provisions of law meaning cases in which the relevant provisions of law are brought to the notice of the court or the tribunal but the court or tribunal disregards them. The other set of cases are those where the decision is based on clear ignorance of the provisions of law which position can only arise when the provisions of law are not brought to the notice of the court or tribunal at all and the court or tribunal also does not for itself discover the relevant provisions of law. The contention of Mr. Pathak that there was no duty cast on the Tribunal to look at the treasury rules and interfere by issue of a writ of *certiorari* when those rules were not brought to the notice of the Tribunal is, therefore, clearly untenable. Consequently, if the rules were not brought to the notice of the Tribunal, the decision of the Tribunal would have to be held to be one based on clear ignorance of the provisions of law and this would, therefore, be a fit case for correcting that error by issue of a writ of *certiorari* on the principle laid down by the Supreme Court in the two cases cited above.

We may also mention that even on facts we were not quite satisfied that, in reality, the decision of the Election Tribunal was given in complete ignorance of the treasury rules even though there is no specific mention of those rules in the order dismissing the election petition under section 90(3) of the Representation of the People Act In that order there is a reference to another decision given by the Tribunal in Election Petition No. 192 of 1957 (Sarvashri Mahendra Pal Singh and Sheobaran Singh *Vs* Shri Mohan Lal Gautam and others) and the decision in that case was followed by the Tribunal in the present case. It is true that the Tribunal made a reference only to that part of the decision in the earlier case where it had been held that the requirements of section 117 of the Representation of the People Act were of a mandatory character. To us, however, it appeared that, in fact the Tribunal, when deciding the present case, relied upon its decision in the earlier case not merely on the question where section 117 of the Representation of the People Act was of a mandatory character but also on the further points discussed in that case on the basis of which the Tribunal had held that there had been failure to comply with the requirements of section 117 of the Representation of the People Act. In the light of this impression, we questioned learned counsel for the parties who had appeared before the Election Tribunal, Shri Iqbal Ahmad, who has appeared for the present petitioner before us, had also appeared for him before the Election Tribunal He stated that when this election petition came up for hearing before the Election Tribunal, the Tribunal made a remark that it had already heard arguments in Shri Mohan Lal Gautam's case and asked Shri Iqbal Ahmad whether he had anything more to say Shri Iqbal Ahmad, who had nothing to add to the arguments that had been advanced in the case of Sri Mohan Lal Gautam, thereupon said that he could not say anything at all This version of Shri Iqbal Ahmad was borne out by the statement of Shri R S. Pathak who had appeared on behalf of the respondent in the election petition, Dr Balkrishna Vishwanath Keskar The decision of the Election Tribunal in Shri Mohan Lal Gautam's case was reported in the U P Gazette (Extraordinary) dated the 8th November, 1957 at page 9 It would appear from that judgment that, at the time of deciding that case, the Election Tribunal made a reference not only to the Cental Government Treasury Rules but also to the U.P Financial Hand book It is true that, during arguments in the present case the points which had been canvassed in the case of Shri Mohan Lal Gautam, were not repeated and gone into all over again, but, in the light of the comment made in the order of the Election Tribunal and the statements made by learned counsel before us, we can only arrive at the finding that all the material which was before the Election Tribunal when dealing with the case of Shri Mohan Lal Gautam must also be treated as having been before the Election Tribunal when dealing with the election petition of the present petitioner This being the position, it is clear that the Election Tribunal had before it all the necessary rules and certain orders issued by or on behalf of the Auditor General of India or the Accountant General of Uttar Pradesh This is, of course, no mention of the instructions contained in the Government of India, Ministry of Finance letter No. D 490/BI/52, dated 22nd January, 1952, which was also taken into account in the case of Bhuvanesh Bhushan Sharma but it appears to us that the letter having been published for public information, it should also have been taken into account by the Tribunal On these materials, the decision of the Election Tribunal was clearly wrong for which view we need give no further reasons as all of them are already contained in the judgment of this Court in the case of Bhuvanesh Bhushan Sharma *Vs* Election Tribunal Farrukhabad and another (1958 A L J R, 443) cited above

Mr Pathak, in opposing the present petition under Article 226 of the Constitution urged one more point which we may deal with Mr Pathak made a reference to a decision of this Court in Mohnga Ram *Vs* Labour Appellate Tribunal of India at Lucknow and another (A I R 1956 Allahabad, 644), to a decision of the Bombay High Court in Gandhi nagar Motor Transport Society *Vs* State of Bombay (A I R. 1954 Bombay, 202) and to a decision of the Calcutta High Court in Messrs Satya Narayan Transport Co Ltd *Vs* Secretary, State Transport Authority, West Bengal and others (A I R 1957 Calcutta, 638) in which cases it was held that a High Court will not ordinarily issue a writ of *certiorari* on the basis of a point which was not taken or urged before the court or tribunal whose order is sought to be interfered by issue of that writ and urged that, in the present case, since it was not urged before the Election Tribunal that the entry of the correct head of account in the treasury receipt was sufficient proof to show that the deposit was in favour of the secretary, Election Commission, and was a valid deposit, that point should not be allowed to be raised in the present writ petition and should not be the basis for the issue of a writ of *certiorari* It appears to us that this argument completely ignores the reason for which we are interfering with the order of the Election Tribunal The point whether the deposit was a valid deposit or whether it suffered from the defect that it was not in favour of the Secretary, Election Commission, was specifically canvassed before the Election Tribunal That is precisely the point which we are called upon to decide in the present writ petition Even the treasury rules, which had to be referred to, were before the Election Tribunal Even if they were not before the Election Tribunal, the Tribunal made a manifest error apparent on the face of the record in deciding the election petition in complete ignorance of those treasury rules which had the force of law If the rules are referred to, they show that the decision of the Tribunal is clearly and manifestly incorrect The petitioner has no other alternative remedy except to come up for relief from this

Court under Article 226 of the Constitution. In these circumstances, this is clearly a fit case where the Court should correct the error committed by the Election Tribunal in exercise of its powers under Article 226 of the Constitution.

The result is that this petition is allowed and the order of the Election Tribunal dated 25th September, 1957, is quashed. The petitioner will be entitled to his costs of this petition which we fix at Rs. 100/-. The result of our order is that the election petition of the petitioner shall be deemed to be still pending and the Election Tribunal shall now proceed to decide it in accordance with the law.

Dated 19-8-1958

Sd. V. B.
Sd. J. N. T.

[No. 82/451/57/2218.]

By Order,

DIN DAYAL, Under Secy.

PRINTED IN INDIA BY THE GENERAL MANAGER, GOVT. OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1958